

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

DIANE ROBERTS

PLAINTIFF

VS

CAUSE NO. 20-132

COLIANT SOLUTIONS, INC.

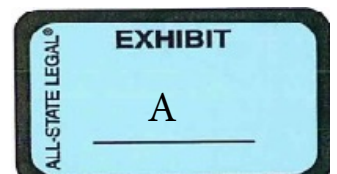
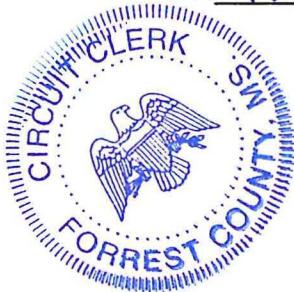
DEFENDANT

I, GWEN WILKS, CLERK OF THE CIRCUIT COURT, IN AND FOR THE COUNTY OF FORREST, STATE OF MISSISSIPPI, DO HEREBY CERTIFY THAT THIS IS A TRUE COPY OF ALL DOCUMENTS FILED IN THE ABOVE STYLED CASE.

GIVEN UNDER MY HAND AND OFFICIAL SEAL OF OFFICE IN THE CITY OF HATTIESBURG, FORREST COUNTY, MISSISSIPPI, ON THIS THE 6 DAY OF April, 2018.

GWEN WILKS, CIRCUIT CLERK

BY: Kayla LaBone D.C.



<b>COVER SHEET</b> Case: 18C11:20-cv-00057 Document 1-2 Filed 04/19/21 Page 2 of 73 <b>Civil Case Filing Form</b> (To be completed by Attorney/Party Prior to Filing of Pleading)		Court Identification Docket # County # Judicial District Court ID District (CH, CL, CO) Month Date Year <b>FILED</b> <b>SEP 30 2020</b>		Docket Number Local Docket ID	
Mississippi Supreme Court		Form AOC/DI		Case Number Filed prior to 1/1/94	
Administrative Office of Courts		(Rev 2009)		This case to be completed by Clerk	
In the <u>CIRCUIT</u> Court of <u>FORREST</u>		<u>FORREST COUNTY CIRCUIT CLERK</u> Judicial District			
<b>Origin of Suit (Place an "X" in one box only)</b> <input checked="" type="checkbox"/> Initial Filing <input type="checkbox"/> Reinstated <input type="checkbox"/> Foreign Judgment Enrolled <input type="checkbox"/> Transfer from Other court <input type="checkbox"/> Other <input type="checkbox"/> Remanded <input type="checkbox"/> Reopened <input type="checkbox"/> Joining Suit/Action <input type="checkbox"/> Appeal					
<b>Plaintiff - Party(ies) Initially Bringing Suit Should Be Entered First - Enter Additional Plaintiffs on Separate Form</b> Individual <u>Roberts</u> <u>Diane</u> Last Name First Name Maiden Name, if applicable M.I. Jr/Sr/III/IV Check ( x ) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: Estate of _____ Check ( x ) if Individual Plaintiff is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity: D/B/A or Agency _____ Business _____ Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated Check ( x ) if Business Plaintiff is filing suit in the name of an entity other than the above, and enter below: D/B/A _____ Address of Plaintiff <u>28 Harris Drive, Petal, MS 39465</u> Attorney (Name & Address) <u>Willie T. Abston, P.O. Box 320727, Flowood, MS 39232</u> MS Bar No. <u>9935</u> Check ( x ) if Individual Filing Initial Pleading is NOT an attorney Signature of Individual Filing: <u>[Signature]</u>					
<b>Defendant - Name of Defendant - Enter Additional Defendants on Separate Form</b> Individual _____ Last Name First Name Maiden Name, if applicable M.I. Jr/Sr/III/IV Check ( x ) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: Estate of _____ Check ( x ) if Individual Defendant is acting in capacity as Business Owner/Operator (d/b/a) or State Agency, and enter entity: D/B/A or Agency _____ Business <u>Coliant Solutions Inc., Registered Agent: Corporation Serv Co. 7716 Old Canton Rd, Suite C, Madison, MS 39110</u> Enter legal name of business, corporation, partnership, agency - If Corporation, indicate the state where incorporated Check ( x ) if Business Defendant is acting in the name of an entity other than the above, and enter below: D/B/A _____ Attorney (Name & Address) - (If Known) _____ MS Bar No. _____					
Damages Sought: Compensatory \$ _____ Punitive \$ _____ Check ( x ) if child support is contemplated as an issue in this suit.* *If checked, please submit completed Child Support Information Sheet with this Cover Sheet					
<b>Nature of Suit (Place an "X" in one box only)</b>					
<b>Domestic Relations</b> <input type="checkbox"/> Child Custody/Visitation <input type="checkbox"/> Child Support <input type="checkbox"/> Contempt <input type="checkbox"/> Divorce: Fault <input type="checkbox"/> Divorce: Irreconcilable Diff. <input type="checkbox"/> Domestic Abuse <input type="checkbox"/> Emancipation <input type="checkbox"/> Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Property Division <input type="checkbox"/> Separate Maintenance <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> UIFSA (eff 7/1/97; formerly URESA) <input type="checkbox"/> Other _____		<b>Business/Commercial</b> <input type="checkbox"/> Accounting (Business) <input type="checkbox"/> Business Dissolution <input type="checkbox"/> Debt Collection <input type="checkbox"/> Employment <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Replevin <input type="checkbox"/> Other _____ <b>Probate</b> <input type="checkbox"/> Accounting (Probate) <input type="checkbox"/> Birth Certificate Correction <input type="checkbox"/> Commitment <input type="checkbox"/> Conservatorship <input type="checkbox"/> Guardianship <input type="checkbox"/> Heirship <input type="checkbox"/> Intestate Estate <input type="checkbox"/> Minor's Settlement <input type="checkbox"/> Muniment of Title <input type="checkbox"/> Name Change <input type="checkbox"/> Testate Estate <input type="checkbox"/> Will Contest		<b>Children/Minors - Non-Domestic</b> <input type="checkbox"/> Adoption - Contested <input type="checkbox"/> Adoption - Uncontested <input type="checkbox"/> Consent to Abortion Minor <input type="checkbox"/> Removal of Minority <input type="checkbox"/> Other _____ <b>Civil Rights</b> <input type="checkbox"/> Elections <input type="checkbox"/> Expungement <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Post Conviction Relief/Prisoner <input type="checkbox"/> Other _____ <b>Contract</b> <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Installment Contract <input type="checkbox"/> Insurance <input type="checkbox"/> Specific Performance <input type="checkbox"/> Other _____ <b>Statutes/Rules</b> <input type="checkbox"/> Bond Validation <input type="checkbox"/> Civil Forfeiture <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Injunction or Restraining Order	
<b>Real Property</b> <input type="checkbox"/> Adverse Possession <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Eviction <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Lien Assertion <input type="checkbox"/> Partition <input type="checkbox"/> Tax Sale: Confirm/Cancel <input type="checkbox"/> Title Boundary or Easement <input type="checkbox"/> Other _____ <b>Torts</b> <input type="checkbox"/> Bad Faith <input type="checkbox"/> Fraud <input type="checkbox"/> Loss of Consortium <input type="checkbox"/> Malpractice - Legal <input type="checkbox"/> Malpractice - Medical <input type="checkbox"/> Mass Tort <input checked="" type="checkbox"/> Negligence - General <input type="checkbox"/> Negligence - Motor Vehicle <input type="checkbox"/> Product Liability <input type="checkbox"/> Subrogation <input type="checkbox"/> Wrongful Death					

Case: 18CL1:20-cv-132 Document #: 7 Filed: 09/30/2020 Page 2 of 2  
IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

## JUDICIAL DISTRICT, CITY OF \_\_\_\_\_

Docket No. \_\_\_\_\_  
File Yr \_\_\_\_\_ Chronological No. \_\_\_\_\_ Clerk's Local ID \_\_\_\_\_Docket No. If Filed  
Prior to 1/1/94 \_\_\_\_\_DEFENDANTS IN REFERENCED CAUSE - Page 1 of \_\_\_\_\_ Defendants Pages  
IN ADDITION TO DEFENDANT SHOWN ON CIVIL CASE FILING FORM COVER SHEET

## Defendant #2:

Individual: \_\_\_\_\_  
Last Name First Name (Maiden Name, if Applicable) Middle Init. Jr/Sr/III/IV

\_\_\_\_ Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of \_\_\_\_\_

\_\_\_\_ Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A \_\_\_\_\_

Business Mark Beard, owner of Another Helper Security Service, 97 County Road 1471, Cullman, AL 35055

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

\_\_\_\_ Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS DEFENDANT: \_\_\_\_\_ Bar # or Name: \_\_\_\_\_ Pro Hac Vice (✓) \_\_\_\_\_ Not an Attorney(✓) \_\_\_\_\_

## Defendant #3:

Individual: \_\_\_\_\_  
Last Name First Name (Maiden Name, if Applicable) Middle Init. Jr/Sr/III/IV

\_\_\_\_ Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of \_\_\_\_\_

\_\_\_\_ Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A \_\_\_\_\_

Business JOHN DOES 1-5 INDIVIDUALLY, JOINTLY AND SEVERALLY

Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

\_\_\_\_ Check (✓) if Business Defendant is being sued in the name of an entity other than the name above, and enter below:

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS DEFENDANT: \_\_\_\_\_ Bar # or Name: \_\_\_\_\_ Pro Hac Vice (✓) \_\_\_\_\_ Not an Attorney(✓) \_\_\_\_\_

## Defendant #4:

Individual: \_\_\_\_\_  
Last Name First Name (Maiden Name, if Applicable) Middle Init. Jr/Sr/III/IV

\_\_\_\_ Check (✓) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

Estate of \_\_\_\_\_

\_\_\_\_ Check (✓) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below:

D/B/A \_\_\_\_\_

Business \_\_\_\_\_  
Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated

\_\_\_\_ Check (✓) if Business Defendant is being sued in the name of an entity other than the above, and enter below:

D/B/A \_\_\_\_\_

ATTORNEY FOR THIS DEFENDANT: \_\_\_\_\_ Bar # or Name: \_\_\_\_\_ Pro Hac Vice (✓) \_\_\_\_\_ Not an Attorney(✓) \_\_\_\_\_

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FILED

DIANE ROBERTS

PLAINTIFF

SEP 30 2020

V.

CIVIL ACTION NO. 20-132

*Forrest*  
FORREST COUNTY CIRCUIT CLERK

COLIANT SOLUTIONS, INC.,

MARK BEARD,

AND JOHN DOES 1 THROUGH 5,

INDIVIDUALLY, JOINTLY and SEVERALLY

DEFENDANTS

**COMPLAINT**  
**PLAINTIFF REQUESTS TRIAL BY JURY**

COMES NOW Plaintiff, Diane Roberts, and through his attorney, Willie T. Abston, files this Complaint for damages against Defendants, Wal-Mart Stores, Inc., Coliant Solutions, Inc. and John Does and for cause would show unto this Court the following, *to wit*:

**JURISDICTION AND VENUE**

1. Plaintiff, Diane Roberts is an adult resident citizen of Forrest County, Mississippi.
2. Defendant Coliant Solutions, Inc. is a foreign corporation, which is registered and doing business in Mississippi, which may be served through its registered agent, Corporation Service Company at 7716 Old Canton Road, Suite C, Madison, MS 39110.
3. Defendant, Mark Beard is owner of Another Helper Security Service and may be served at his business address located at 97 County Road 1471, Cullman, AL 35055.
4. This suit is brought for an amount above the minimum jurisdictional limits of this Court and that this Court has or can obtain jurisdiction of the parties and the subject matter and that venue is based on the fact that the incident occurred in Natchez, Adams County, Mississippi.

**FACTS**

5. On or about, October 1, 2017, the Plaintiff was an employee of Walmart Store #887 located at 36 Byrd Blvd., Petal, MS. Plaintiff was working in the accounting office and as she was exiting the office, a security camera system that had not been secured fell on her head.

The Defendants, Walmart Stores, Inc. and Coliant Solutions, Inc., owed a duty to the Plaintiff to keep the premises of the Walmart Store business office in a reasonably safe condition, to warn the Plaintiff of any dangerous conditions not readily apparent of which it knew or should have known in the exercise of reasonable care, and to conduct reasonable inspections to discover dangerous conditions existing on the premises of Walmart Store #887.

6. The Defendants, Walmart Stores, Inc., and Defendant Coliant Solutions, Inc. breached its duties owed to the Plaintiff in the following ways:

- a. Defendants failed to maintain the premises of Walmart Store #887 in reasonably safe condition;
- b. Defendants allowed a security camera system that had not been secured fell on Plaintiff's head when the Defendants knew, or in the exercise of reasonable care, should have known, that the hazard created an unreasonable risk of harm to employees in the business office of Walmart store #887;
- c. Defendants failed to warn Plaintiff of the danger presented by the presence of the unsecured security system;
- d. Defendants failed to properly inspect the premises in order to discover hazardous conditions on the premises of Walmart Store #887;
- e. Defendants failed to otherwise exercise due care with respect to the matters alleged in this Complaint.

#### **DAMAGES**

7. As a direct and proximate result of the negligence and carelessness of the Defendants, the Plaintiff:



a. suffered serious, painful, temporary, and permanent bodily injuries, great physical pain and mental anguish, severe and substantial emotional distress, loss of the capacity for the enjoyment of life;

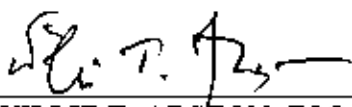
b. was, is, and will be required to undergo medical treatment and to incur medical costs and expenses in order to alleviate injuries, pain and suffering;

c. was, is and will be precluded from engaging in normal activities and pursuits, including a loss of ability to earn money and of actual earnings.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff requests a trial by jury and demands judgment of and from the Defendant in an amount in excess of the minimum jurisdictional limits of this Court with such amount to be determined at the trial of this cause together with reasonable attorney's fees, costs of litigation and pre and post judgment interests pursuant to Mississippi Code Annotated Section 75-17-7 as allowed by law and all costs of Court.

Respectfully Submitted,

DIANE ROBERTS, PLAINTIFF

BY:   
WILLIE T. ABSTON, ESQ.  
MS Bar No. 9935

Willie T. Abston  
P. O. Box 320727  
Flowood, MS 39232  
Tel.: (601)487-8839  
Fax: (601)487-8667  
Email: [willie.abston@abstonlaw.com](mailto:willie.abston@abstonlaw.com)

**WILLIE ABSTON**  
ATTORNEY AT LAW

September 29, 2020

**FILED**

**SEP 30 2020**

Circuit Clerk of Forrest County  
630 Main Street  
Hattiesburg, MS 39401

*J. Smith*  
FORREST COUNTY CIRCUIT CLERK

**Re: *Diane Roberts v. Coliant Solutions, Inc.,***  
In the Circuit Court Forrest County, Mississippi

Dear Sir:

Please find enclosed regarding the above referenced matter, the Civil Cover Sheet, Summons and Complaint. Please issue and return the Summons as well as a stamped filed copy of the Complaint in this matter. Our office will forward the Summons and Complaint to the Sheriff for personal service.

I have also enclosed our firm's check in the amount of \$160.00 which represents the filing fee in this matter.

Should you have any questions or need anything further, please feel free to give me a call. Thank you for your kind attention to this matter.

Sincerely,

**WILLIE T. ABSTON, LLC**

*Yvette L. Cole*  
Yvette L. Cole  
Legal Assistant

/ylc  
Enclosures

12/14

**IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI**

**DIANE ROBERTS**

**PLAINTIFF**

**V.**

**CIVIL ACTION NO. 20-132**

**COLIANT SOLUTIONS, INC.,  
MARK BEARD,  
AND JOHN DOES 1 THROUGH 5,  
INDIVIDUALLY, JOINTLY and SEVERALLY**

**DEFENDANTS**

**SUMMONS**

**THE STATE OF MISSISSIPPI**

**TO: Mark Beard  
Another Helper Security Service  
97 County Road 1471  
Cullman, AL 35055**

**NOTICE TO DEFENDANT(S)**

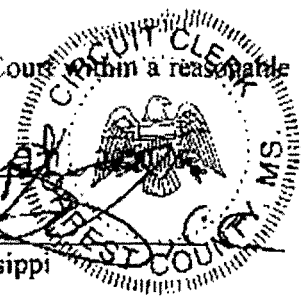
**THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.**

You are required to mail or hand-deliver a copy of a written response to the Complaint to Willie T. Abston, Esquire, the attorney for the Plaintiff(s), whose post office address is Post Office Box 320727, Flowood, Mississippi 39232. Your response must be mailed or delivered within (30) days from the date of delivery of this summons and complaint or a judgment by default will be entered against you for the money or other things demanded in the complaint.

You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and the seal of said Court this 30 day of Sept

  
Clerk of Forrest County, Mississippi



Willie T. Abston, LLC (MSB No. 9935)  
Post Office Box 320727  
Flowood, MS 39232  
Tel. (601)487-8839  
Fax (601)487-8667  
Email: [willie.abston@abstonlaw.com](mailto:willie.abston@abstonlaw.com)



K7A

**IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI**

**DIANE ROBERTS**

**PLAINTIFF**

**V.**

**CIVIL ACTION NO. 20-132**

**COLIANT SOLUTIONS, INC.,  
MARK BEARD,  
AND JOHN DOES 1 THROUGH 5,  
INDIVIDUALLY, JOINTLY and SEVERALLY**

**DEFENDANTS**

**SUMMONS**

**THE STATE OF MISSISSIPPI**

**TO: Coliant Solutions, Inc.  
Registered Agent:  
Corporation Service Company  
7716 Old Canton Road, suite C  
Madison, MS 39110**

**NOTICE TO DEFENDANT(S)**

**THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.**

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You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and the seal of said Court this 30 day of Sept, 2020.

  
Clerk of Forrest County, Mississippi



Willie T. Abston, LLC (MSB No. 9935)  
Post Office Box 320727  
Flowood, MS 39232  
Tel. (601)487-8839  
Fax (601)487-8667  
Email: [willie.abston@abstonlaw.com](mailto:willie.abston@abstonlaw.com)

Case: 18CI1:20-cv-00132 Document #: 1 Filed: 10/15/2020 Page 1 of 2

**IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI**

**DIANE ROBERTS**

**PLAINTIFF**

**V.**

**CIVIL ACTION NO. 20-132H**

**COLIANT SOLUTIONS, INC.,  
MARK BEARD,  
AND JOHN DOES 1 THROUGH 5,  
INDIVIDUALLY, JOINTLY and SEVERALLY**

**DEFENDANTS**

**SUMMONS**

**THE STATE OF MISSISSIPPI**

TO: Coliant Solutions, Inc.  
Registered Agent:  
Corporation Service Company  
7716 Old Canton Road, suite C  
Madison, MS 39110

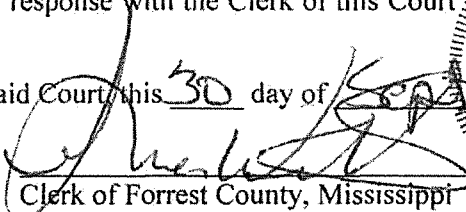
**NOTICE TO DEFENDANT(S)**

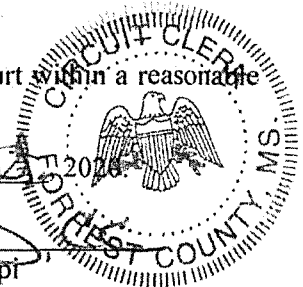
THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You are required to mail or hand-deliver a copy of a written response to the Complaint to Willie T. Abston, Esquire, the attorney for the Plaintiff(s), whose post office address is Post Office Box 320727, Flowood, Mississippi 39232. Your response must be mailed or delivered within (30) days from the date of delivery of this summons and complaint or a judgment by default will be entered against you for the money or other things demanded in the complaint.

You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and the seal of said Court this 30 day of SEP 2020.

  
Clerk of Forrest County, Mississippi



Willie T. Abston, LLC (MSB No. 9935)  
Post Office Box 320727  
Flowood, MS 39232  
Tel. (601)487-8839  
Fax (601)487-8667  
Email: [willie.abston@abstonlaw.com](mailto:willie.abston@abstonlaw.com)

Case: 18CI1:20-cv-00132 Document #: 1 Filed: 10/15/2020 Page 2 of 2

RECEIVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

BY: \_\_\_\_\_

RETURN

State of Mississippi

County of Madison

(☒) I personally delivered copies of the summons and complaint on the 9<sup>th</sup> day of October, 2020, to: Corporation Service Company.

( ) After exercising reasonable diligence I was unable to deliver copies of the summons and complaint to \_\_\_\_\_ within \_\_\_\_\_ County, \_\_\_\_\_. I served the summons and complaint on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, at the usual place of abode of said \_\_\_\_\_, by leaving a true copy of the summons and complaint with \_\_\_\_\_, who is the \_\_\_\_\_ (here insert wife, husband, son, daughter or other person so as the case may be), a member of the family of the person served above the age of sixteen years and willing to receive the summons and complaint, and thereafter on the \_\_\_\_\_ day of \_\_\_\_\_, 2020. I mailed (by first class mail, postage prepaid) copies to the person served at his or her usual place of abode where the copies were left.

( ) I was unable to serve the summons and complaint.

This the 9<sup>th</sup> day of October, 2020.

W. T. R.  
\_\_\_\_\_  
Process Server

By: \_\_\_\_\_, Deputy Sheriff

\_\_\_\_\_  
If served by Sheriff, provide name of County

[Note: All summons issued to the sheriff must be returned within thirty days from the day the summons was received by the sheriff pursuant to the requirements of Mississippi Rule of Civil Procedure 4(c)(2)]

Case: 18CI1:20-cv-00132 Document #: 3 Filed: 01/13/2021 Page 1 of 2

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

FILED

DIANE ROBERTS

PLAINTIFF

v.

JAN 13 2021

CIVIL ACTION NO. 20-132

COLIANT SOLUTIONS, INC.,  
MARK BEARD,  
AND JOHN DOES 1 THROUGH 5,  
INDIVIDUALLY, JOINTLY and SEVERALLY

*John W. Cole*  
FORREST COUNTY CIRCUIT CLERK

DEFENDANTS

APPLICATION TO CLERK FOR ENTRY  
OF DEFAULT AND SUPPORTING AFFIDAVIT

The clerk is requested to enter default against the defendant in the above entitled action for failure to plead, answer or otherwise defend as set out in the affidavit hereto annexed.

The attorney for the Plaintiff in the State of Mississippi and in the County of Rankin, being duly sworn, deposed and says:

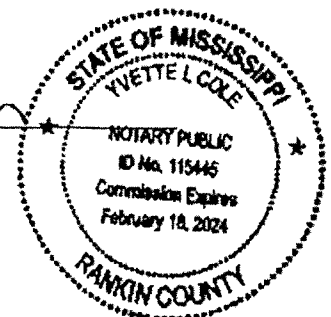
1. That he is attorney of record of the Plaintiff, and has personal knowledge of the facts set forth in this affidavit.
2. That the Defendant was duly served with a copy of the summons, together with a copy of Plaintiff's complaint, on the 9<sup>th</sup> day of October, 2020.
3. That more than 30 days have elapsed since the date on which the said defendant was served with summons and a copy of the complaint.
4. That the defendant has failed to answer or otherwise defend as to Plaintiff's complaint, or serve a copy of any answer or other defense which he might have upon the undersigned attorney of record for the plaintiff.
5. That this affidavit is executed by affiant herein in accordance with Rule 55(a) of the Mississippi Rules of Civil Procedure, for the purpose of enabling the plaintiff to obtain an entry of default against the defendant, for his failure to answer or otherwise defend as to the plaintiff's complaint.

*Willie T. Abston*  
Willie T. Abston  
Attorney for Plaintiff

Sworn to and subscribed before me this the 7<sup>th</sup> day of Jan., 2021.

My Commission Expires: February 16, 2024

*Yvette L. Cole*  
Notary Public



www.abstonlaw.com  
willie.abston@abstonlaw.com  
kenosha.whitehead@abstonlaw.com  
dorene.harper@abstonlaw.com  
yvette.cole@abstonlaw.com  
quentessa.reed@abstonlaw.com



Post Office Box 320727  
Flowood, Mississippi 39232  
Phone: 601.487.8839  
Fax: 601.487.8667

January 7, 2021

Circuit Clerk of Forrest County  
630 Main Street  
Hattiesburg, MS 39401

**Re: *Diane Roberts v. Coliant Solutions, Inc. et al;***  
**In the Circuit Court of Forrest County, Mississippi**  
**Civil Action No. 20-132**

Dear Sir/Madam:

Enclosed please find for filing a Motion for Default Judgment along with the Declaration, Clerk entry of default judgment and application in the above referenced matter.

If you have any questions, please feel free to contact my office. Thank you for your kind attention to this matter.

Sincerely,

WILLIE T. ABSTON, LLC

Willie T. Abston, Esq.

WTA/ylc  
Enclosures

Case: 18Cl1:20-cv-00132 Document #: 4 Filed: 01/13/2021 Page 1 of 1

IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

DIANE ROBERTS

FILED

PLAINTIFF

V.

JAN 13 2021

CIVIL ACTION NO. 20-132

*Shirley*  
FORREST COUNTY CIRCUIT CLERK

COLIANT SOLUTIONS, INC.,  
MARK BEARD,  
AND JOHN DOES 1 THROUGH 5,  
INDIVIDUALLY, JOINTLY and SEVERALLY

DEFENDANTS

ENTRY OF DEFAULT JUDGMENT

Default entered against defendant this 13 day of Jan, 2021.

*Shirley*  
by: Shirley  
CLERK

Respectfully Submitted,

This the 7th day of January, 2021.

Diane Roberts, Plaintiff

BY: Willie T. Abston  
WILLIE T. ABSTON, ESQ.  
MS Bar No. 9935

WILLIE T. ABSTON, LLC  
P. O. Box 320727  
Flowood, MS 39232  
Tel.: (601)487-8839  
Fax: (601)487-8667  
Email: [willic.abston@abstonlaw.com](mailto:willic.abston@abstonlaw.com)  
ATTORNEY FOR PLAINTIFF



Case: 18CI1:20-cv-00132 Document #: 6 Filed: 01/13/2021 Page 1 of 8

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

**Diane Roberts,**

Plaintiff

v.

**Coliant Solutions, Inc., Mark Beard,  
and John Does 1 through 5,  
Individually, Jointly and Severally,**

Defendant

Cause No. 18CI1:20-cv-132

**Answer and Defenses**

COMES NOW, the defendant, **Coliant Solutions, Inc.** through counsel, and responds to the allegations in the Complaint as follows:

**FIRST DEFENSE**

The complaint fails to state a claim upon which relief can be granted and it should be dismissed pursuant to Rule 12(b)(6) of the Mississippi Rules of Civil Procedure.

**SECOND DEFENSE**

Coliant Solutions, Inc. generally denies all the averments contained in the Complaint, and each paragraph and subparagraph thereof, except such designated averments, paragraphs or subparagraphs, as are expressly set forth to the contrary more fully herein below pursuant to Rule 8(b) of the Mississippi Rules of Civil Procedure.

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**AND NOW**, Coliant Solutions, Inc., without waiving any of the above-referenced defenses, responds to each and every numbered paragraph in Plaintiff's Complaint, as follows, to-wit:

**JURISDICTION AND VENUE**

1. Plaintiff, Diane Roberts is an adult resident citizen of Forrest County, Mississippi.

**Response:** Admitted.

2. Defendant Coliant Solutions, Inc. is a foreign corporation, which is registered and doing business in Mississippi, which may be served through its registered agent, Corporation Service Company at 7716 Old Canton Road, Suite C, Madison, MS 39110.

**Response:** Admitted.

3. Defendant, Mark Beard is owner of Another Helper Security Service and may be served at his business address located at 97 County Road 1471, Cullman, AL 35055.

**Response:** The allegations in this complaint do not pertain to Coliant Solutions, Inc. Therefore, no response is required of this Defendant.

4. This suit is brought for an amount above the minimum jurisdictional limits of this Court and that this Court has or can obtain jurisdiction of the parties and the subject matter and that venue is based on the fact that the incident occurred in Natchez, Adams County, Mississippi.

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**Response:** Denied. Coliant Solutions, Inc. does not contest personal jurisdiction or subject matter jurisdiction. It is admitted that venue is proper in Forrest County (not Adams).

### **FACTS**

5. On or about, October 1, 2017, the Plaintiff was an employee of Walmart Store #887 located at 36 Byrd Blvd., Petal, MS. Plaintiff was working in the accounting office and as she was exiting the office, a security camera system that had not been secured fell on her head. The Defendants, Walmart Stores, Inc. and Coliant Solutions, Inc., owed a duty to the Plaintiff to keep the premises of the Walmart Store business office in a reasonably safe condition, to warn the Plaintiff of any dangerous conditions not readily apparent of which it knew or should have known in the exercise of reasonable care, and to conduct reasonable inspections to discover dangerous conditions existing on the premises of Walmart Store #887.

**Response:** Coliant Solutions, Inc. lacks sufficient information or knowledge to admit or deny the allegations in this paragraph. Therefore, the allegations are denied.

6. The Defendants, Walmart Stores, Inc., and Defendant Coliant Solutions, Inc. breached its duties owed to the Plaintiff in the following ways:

- a. Defendants failed to maintain the premises of Walmart Store #887 in reasonably safe condition;
- b. Defendants allowed a security camera system that had not been secured fell on Plaintiff's head when the Defendants knew, or in the exercise of reasonable care, should have known, that the hazard creased an

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unreasonable risk of harm to employees in the business office of Walmart store 4887;

- c. Defendants failed to warn Plaintiff of the danger presented by the presence of the unsecured security system;
- d. Defendants failed to properly inspect the premises in order to discover hazardous conditions on the premises of Walmart Store 4887;
- e. Defendants failed to otherwise exercise due care with respect to the matters alleged in this Complaint.

---

**Response:** Denied.

#### **DAMAGES**

7. As a direct and proximate result of the negligence and carelessness of the Defendants, the Plaintiff:

- a. suffered serious, painful, temporary, and permanent bodily injuries, great physical pain and mental anguish, severe and substantial emotional distress, loss of the capacity for the enjoyment of life;
- b. was, is, and will be required to undergo medical treatment and to incur medical costs and expenses in order to alleviate injuries, pain and suffering;
- c. was, is and will be precluded from engaging in normal activities and pursuits, including a loss of ability to earn money and of actual earnings.

**Response:** All allegations of negligence and carelessness are denied. With regard to damages, Coliant Solutions, Inc. lacks sufficient information or knowledge to admit or deny those allegations. Therefore, the allegations are denied.

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WHEREFORE, PREMISES CONSIDERED, the Plaintiff requests a trial by jury and demands judgment of and from the Defendant in an amount in excess of the minimum jurisdictional limits of this Court with such amount to be determined at the trial of this cause together with reasonable attorney's fees, costs of litigation and pre and post judgment interests pursuant to Mississippi Code Annotated Section 75-17-7 as allowed by law and all costs of Court.

**Response:** In response to the unnumbered ad damnum paragraph, the Defendant denies that the Plaintiff is entitled to a judgment from Coliant Solutions, Inc. in the amount demanded, or in any amount whatsoever.

AND NOW, RESPONDING AFFIRMATIVELY, Coliant Solutions, Inc. would show unto the Court the following, to-wit:

**FIRST AFFIRMATIVE DEFENSE**

Coliant Solutions, Inc. would affirmatively plead Mississippi Code Annotated § 11-7-15 (1972) and § 85-5-7 (Rev. 1991) and would aver that the acts or omissions of others, for whom this Defendant has no responsibility or liability, are the sole proximate, or contributing, cause of the Plaintiff's injury and that a jury must be allowed to assess the proportionate share of fault to said parties and/or participants.

**SECOND AFFIRMATIVE DEFENSE**

Coliant Solutions, Inc. avers that he exercised the degree of care which a reasonably prudent person would have exercised in the same or similar circumstances and thus did not breach any applicable duty owed to Plaintiff.

**THIRD AFFIRMATIVE DEFENSE**

The Plaintiff has failed to mitigate her damages as required by law.

**FOURTH AFFIRMATIVE DEFENSE**

In the event subsequent investigation reveals that the sole proximate, and/or contributing, cause of the Plaintiff's damages, if any, was a preexisting condition, disease, lesion or other illness for which this Defendant would not be liable, the Defendant reserves the right to defend on said basis.

**FIFTH AFFIRMATIVE DEFENSE**

The Defendant would aver that the Plaintiff has failed to join an indispensable party whose presence is needed for a just adjudication of this matter since complete relief cannot be afforded in said party's absence and due to the fact that said party has an interest relating to the subject matter and is so situated that a disposition in said party's absence may (i) impair or impede the person's ability to protect that interest, or (ii) leave the Defendant subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.

**SIXTH AFFIRMATIVE DEFENSE**

In the event subsequent investigation reveals that the Plaintiff's damages, if any, are the result of an intervening act and/or event occurring subsequent to October 1, 2017, which was the sole proximate and/or substantially contributing cause, Coliant Solutions, Inc. reserves the right to defend on said basis.

**SEVENTH AFFIRMATIVE DEFENSE**

Coliant Solutions, Inc. reserves the right to affirmatively plead any and all other defenses and affirmative defenses available to him which may become applicable through discovery and during the trial of this cause.

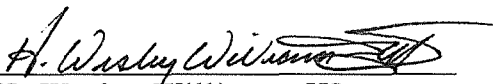


**EIGHTH AFFIRMATIVE DEFENSE**

The facts not having been fully developed, the defendant adopts the following affirmative defenses: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge and bankruptcy, duress, estoppels, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense as may be shown by the fact in this cause.

WHEREFORE, PREMISES CONSIDERED, Coliant Solutions, Inc. respectfully requests that this Answer be received and deemed sufficient and that a Judgment be entered in its favor denying the relief requested by the Plaintiff and dismissing this action with prejudice with costs being assessed against the Plaintiff. Coliant Solutions, Inc. also prays for any general relief which the Court may deem appropriate in the premises.

Respectfully submitted, this the 13th day of January, 2021.

  
H. Wesley Williams, III

H. Wesley Williams, III  
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Markow Walker, PA  
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*Counsel for Coliant Solutions, Inc.*

Case: 18CI1:20-cv-00132 Document #: 6 Filed: 01/13/2021 Page 8 of 8


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing Pleading was this day forwarded to all counsel of record by depositing a copy of same via:

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|--|---|
| <input type="checkbox"/> United States Mail    | <input type="checkbox"/> Certified Mail |
| <input type="checkbox"/> Facsimile             | <input type="checkbox"/> Hand Delivery  |
| <input type="checkbox"/> Email                 | <input type="checkbox"/> Overnight Mail |
| <input checked="" type="checkbox"/> ECF System |   |

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THIS the 13th day of January, 2021.

  
H. Wesley Williams, III

Case: 18CI1:20-cv-00132 Document #: 11 Filed: 02/24/2021 Page 1 of 24

**FILED**

**FEB 24 2021**

**IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI**

*Janet Little*  
**FORREST COUNTY CIRCUIT CLERK**

**Diane Roberts,**

**Cause No. 18CI1:20-cv-132**

**Plaintiff**

**v.**

**Motion to Set Aside  
Clerk's Entry of Default**

**Coliant Solutions, Inc., Mark Beard,  
and John Does 1 through 5,  
Individually, Jointly and Severally,**

**Defendant**

COMES NOW, the Defendant, Coliant Solutions, Inc. through counsel, and herby moves this Court to set aside the Clerk's Entry of Default as follows:

**1. FACTS**

This action arises out of an incident which occurred on or about October 1, 2017, wherein the Plaintiff was allegedly struck in the head by a falling security camera as she was leaving her place of employment at the Walmart Store #887 located at 36 Byrd Boulevard in Petal, Mississippi. The Plaintiff filed her Complaint on September 30, 2020, which was served upon Defendant, Coliant Solutions, Inc., via its registered agent on October 9, 2020. On January 7, 2021, the Circuit Clerk of Forrest County, Mississippi, filed an Entry of Default, by which time Defendant Coliant Solutions, Inc. had not filed an Answer to the Plaintiff's Complaint. In support of her Motion for Default Judgment, also filed January 7, 2021, the Plaintiff

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alleged that the Defendant Coliant Solutions, Inc. had failed to meet the procedural time requirement in filing its Answer or other defense. On January 13, 2021, Defendant Coliant Solutions, Inc. filed its Answer and Defenses (Doc. #6), wherein it asserted a general denial of liability, as well as multiple defenses to the Plaintiffs claims.

## II. LAW AND ARGUMENT

### a. Standard for setting aside an Entry of Default

It has been long established in Mississippi that “(d)efault judgments are not favored, and trial judges have traditionally been lenient when it comes to relieving a party of the burden of a default judgment.” *King v. Sigrest*, 641 So. 2d 1158, 1161 (Miss. 1994), quoting *Bell v. City of Bay St. Louis*, 467 So. 2d 657, 661 (Miss. 1985). Rule 55(c) of the Mississippi Rules of Civil Procedure provides procedural mechanisms regarding setting aside an entry of default:

**(c) Setting Aside Default.** For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

MISS. R. CIV. P. 55(c). Subsections (a) and (b) of Rule 55 also establish the clear distinction between an entry of default and a default judgment. The standard for obtaining and setting aside a clerk’s entry of default is different from that required to obtain and set aside a court’s adjudication of default. MISS. R. CIV. P. 55(c); *see also, Windmon v. Marshall*, 926 So. 2d 867, 871 (Miss. 2006), *Allstate Ins. Co. v. Green*, 794 So. 2d 170, 178-179 (Miss. 2001). In the instant case, Defendant Coliant Solutions, Inc. is asking this Court only to set aside the clerk’s entry of default; presently, no default judgment has been entered against Defendant.

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The Mississippi Supreme Court has held that to set aside an entry of default, nothing other than good cause must be shown. *Tatum v. Barrentine*, 797 So. 2d 223, 227 (Miss. 2001). This is “a more liberal standard for setting aside a default than the standard for setting aside a default judgment.” *King v. Sigrest*, 641 So. 2d 1158, 1162 (Miss. 1994); *see also, Windmon*, 926 So. 2d at 871. “‘Good cause shown’ [...] requires the moving party to provide an explanation for the default or give reasons why vacation of the default entry would serve the interests of justice.” *King v. Bunton*, 43 So. 3d 361, 364-365 (Miss. 2010), quoting *Windmon*, 926 So. 2d at 871 and *Green*, 794 So. 2d at 179.

In determining whether good cause exists for setting aside entry of default, the Court may consider such factors as clerical mistakes, misunderstanding, or failure to receive service of process. *Allstate*, 794 So. 2d at 179 (Waller, concurring). “Good cause” is difficult to define; however, when considering whether set aside a clerk’s entry of default, courts have applied a more lenient version of the standard to set aside a judgment of default. *Allstate Settlement Corp. v. Huie*, 2010 U.S. Dist. LEXIS 14098 (N.D. Miss. 2010). A default judgment “should not be granted on the claim, *without more*, that the defendant had failed to meet a procedural time requirement.” *Id.* (Emphasis added). “[W]here there are no intervening equities any doubt should, as a general proposition, be resolved in favor of the movant to the end of securing a trial upon the merits.” *Lacy v. Sitel Corp.*, 227 F.3d 290, 292 (5th Cir. 2000) (quoting *Gen. Tel. Corp. v. Gen. Tel. Answering Serv.*, 277 F.2d 919 at 921).

“[D]efault judgments are not favored and trial courts should not be grudging in the granting of orders vacating such judgments where showings within the rules have arguably been made.” *McCain v. Dauzat*, 791 So. 2d 839, 842 (Miss. 2001),

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quoting *Guaranty Nat'l Ins. Co. v. Pittman*, 501 So. 2d 377, 387-388 (Miss. 1987). The importance of litigants having a trial on the merits should always be a serious consideration by a trial judge in such matters. Thus, any error made by a trial judge should be in the direction of setting aside a default judgment and proceeding with trial. *Allstate Ins. Co. v. Green*, 794 So. 2d 170, 174 (Miss. 2001).

Even when dealing with a default judgment as opposed to the more lenient entry of default, the Mississippi Supreme Court has explained that default judgments are never favored. *Chassanoil v. Bank of Kilmichael*, 626 So. 2d 127, 135 (Miss. 1993) (“[R]elief should be granted when there is a showing within the rules.”). Although a three-part balancing test exists for setting aside a default judgment, the Mississippi Supreme Court has held that the three-part test is not applicable to setting aside an entry of default. *Barrentine*, 797 So. 2d 223 at 227.

**b. Good Cause exists for setting aside the Clerk’s January 7, 2021, Entry of Default.**

As pointed out by Justice Waller’s concurrence in *Green, supra*, a court may consider, *inter alia*, the enumerated reasons under Rule 60(b) to determine whether “good cause” exists for setting aside an entry of default. “‘Good cause shown’ ... requires the moving party to provide an explanation for the default or to give reasons why vacation of the default entry would serve the interests of justice. Any of the reasons sufficient to justify the vacation of a default judgment under Rule 60(b) normally will justify relief from a default entry[.]” *Green*, 794 So. 2d at 179. The reasons sufficient to justify vacating a default judgment under Rule 60(b) include “(1) whether the defendant has good cause for the default, (2) whether the defendant in fact has a colorable defense to the merits of the claim, and (3) the nature and extent



of prejudice to the plaintiff if the default judgment is set aside.” *Green*, 794 So. 2d at 174.

Here, Defendant Coliant Solutions, Inc. has a colorable defense on the merits to Plaintiff’s claims. At the time of the incident which resulted in Plaintiff’s alleged injuries, Coliant Solutions was subject to a “Master Subcontractor Agreement” with Another Helper, which is owned by Defendant Mark Beard. **Exhibit A.** Pursuant to that agreement, Another Helper was obligated to defend indemnify, and hold harmless Coliant Solutions for the claim that has been made by Plaintiff. Coliant Solutions tendered the defense of this claim by letter sent September 10, 2020, after Coliant and its insurer became aware of the forthcoming litigation. Said letter is attached hereto as **Exhibit B.** Coliant Solutions’ failure to timely answer Plaintiff’s Complaint was the result of their reasonable reliance on their indemnification agreement with Another Helper, which was memorialized in the Master Subcontractor Agreement.

Additionally, the Plaintiff has asserted no facts that point to any prejudice she would suffer if the Entry of Default were aside. The Plaintiff has presented no basis other than Defendant’s failure to timely answer her Complaint as support for her Motion for Default Judgment. As noted by the *Huie* court, *supra*, claims that a defendant failed to meet a procedural time requirement, without more, cannot serve as a basis for entering a default judgment. Thus, the Plaintiff has not provided this Court with adequate basis for granting the relief requested in her motion.

In keeping with the axiom that default judgments are not favored, the Mississippi Supreme Court has held that the existence of defenses alone constitutes good cause to set aside a clerk’s entry of default. “In Barrentine’s motion to set aside

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the entry of default, she argued several defenses ... Based on the record, we hold that the circuit judge was certainly within his discretion to set aside this entry of default. Barrentine's motion provided numerous defenses that established 'good cause' consistent with M.R.C.P. 55(c)." *Tatum*, 797 So. 2d at 227.

In the *Green* case, the Mississippi Supreme Court found that of the three factors examined to set aside a default judgment,<sup>1</sup> "the second factor, the presence of a colorable defense, outweighs the other two, and we have encouraged trial courts to vacate a default judgment where 'the defendant has shown that he has a meritorious defense.'" *Green*, 794 So. 2d at 174. The court emphasized that "the importance of litigants having a trial on the merits should always be a serious consideration by a trial judge in such matters." *Id.* The Mississippi Supreme Court has held that even a default judgment should be vacated when defendant demonstrates that he has a "meritorious defense." *Green*, 794 So. 2d at 174. The same considerations should apply in this case to set aside the clerk's entry of default against this Defendant.

### III. CONCLUSION

Mississippi law strongly prefers a disposition of lawsuits on the merits, rather than by default. The legal standard to set aside an entry of default is more lenient than that required to set aside a default judgment. Importantly, relief from an entry of default should be granted where the defending party acts with reasonable diligence in seeking a set aside of default and tenders a meritorious defense. Defendant Coliant

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<sup>1</sup> It should again be noted that the Mississippi Supreme Court has held specifically that the three-part test is not applicable to setting aside the clerk's entry of default. *Barrentine*, 797 So. 2d 223 at 227. However, the weight given to a colorable defense is instructive here.

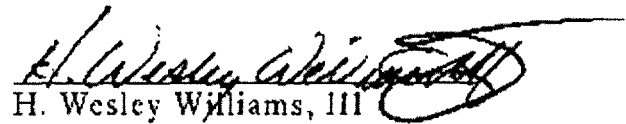
Case: 18CI1:20-cv-00132 Document #: 11 Filed: 02/24/2021 Page 7 of 24

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing Pleading was this day forwarded to all counsel of record by depositing a copy of same via:

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| <input type="checkbox"/> Facsimile             | <input type="checkbox"/> Hand Delivery  |
| <input type="checkbox"/> Email                 | <input type="checkbox"/> Overnight Mail |
| <input checked="" type="checkbox"/> ECF System |   |

THIS the 22th day of February, 2021.

  
H. Wesley Williams, III

and performing the Contractor's work to avoid conflicts or interference in the Subcontractor's work and shall expedite written responses to submittals made by the Subcontractor in accordance with this Agreement. As soon as practicable after execution of this agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's work properly. The Subcontractor shall be notified promptly of subsequent changes in the construction and submit schedules and additional scheduling details.

### 3.2 COMMUNICATIONS

- 3.2.1 The Contractor shall promptly make available to the Subcontractor information which affects this Subcontract and which becomes available to the Contractor subsequent to execution of this Subcontract.
- 3.2.2 The Contractor shall not give instructions or orders directly to employees or workmen of Subcontractor, except to persons designated as authorized representatives of the Subcontractor. The Contractor shall have full access, including names and cell phone and/or pager numbers of technicians who will perform work. The Subcontractor agrees to only communicate with the Contractor regarding all communication reference to projects performed by the Subcontractor for Contractor.
- 3.2.3 The Subcontractor shall not communicate with the Owner/Customer regarding the scheduling of work.
- 3.2.4 The Subcontractor shall indicate they are representing Contractor while performing the work for the Owner/Customer. The Subcontractor shall, under no circumstances, hand out business cards or other company related items to the Customer.
- 3.2.5 The Subcontractor shall communicate all terms and conditions of this agreement within their organization.

### 3.3 CLAIMS BY THE CONTRACTOR

- 3.3.1 Liquidated damages for delay, if provided for in this agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor, the Subcontractor's employees and agents, Sub-subcontractors, suppliers or any person or entity for whose acts the Subcontractor may be liable.

3.3.2 Except as may be indicated in this Agreement, the Contractor agrees that no claim for payment for services rendered or materials and equipment furnished by the Contractor to the Subcontractor shall be valid without prior purchase order issued by the Contractor to the Subcontractor. Verbal orders will not be processed for payment.

### 3.4 CONTRACTORS REMEDIES

3.4.1 If the Subcontractor defaults or neglects to carry out the work in accordance with this agreement and fails within three working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after three days following receipt by the Subcontractor of an additional written notice, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due the Subcontractor. For example if Subcontractor does not complete site survey the Contractor can employ another Subcontractor to perform the labor at the expense of the original Subcontractor.

### 3.5 INVOICING

3.5.1 For all work that has been completed to 100%, the Subcontractor shall communicate, either by fax or email, within ten (10) days, a complete invoice for all work performed along with any and all signed paperwork necessary for Contractor to invoice customer. IMPORTANT-If Subcontractor does not invoice Contractor within above time frame, thirty days (30), the Subcontractor agrees not to submit an invoice for work provided and the work will be at no cost to the Contractor.

## ARTICLE 4 SUBCONTRACTOR

### 4.1 EXECUTION AND PROGRESS OF THE WORK

4.1.1 The Subcontractor shall cooperate with the Contractor in scheduling and performing the Subcontractor's work to avoid conflict, delay in or interference with the work of the Contractor.

**4.1.2** The Subcontractor shall promptly submit project plans, drawings, product data, samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the work or in the activities of the Contractor or other subcontractors.

**4.1.3** If requested, the Subcontractor shall submit to the Contractor a schedule of values allocated to the various parts of the work of this Subcontract, aggregating the Subcontract Sum, made out in such detail as the Contractor and Subcontractor may agree upon or as required by the Owner, and supported by such evidence as the Contractor may direct. In applying for payment, the Subcontractor shall submit statements based upon this schedule.

**4.1.4** The Subcontractor shall furnish to the Contractor periodic progress reports on the work of this Subcontract as mutually agreed, including information on the status of materials and equipment, which may be in the course of preparation or manufacture.

**4.1.5** The Subcontractor agrees that the Contractor will have the authority to reject work that does not conform to a specification or the scope of work defined in the purchase order issued by the Contractor.

**4.1.6** The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

**4.1.7** The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

**4.1.8** The Subcontractor shall cooperate with the Contractor, other subcontractors and the Owner's own forces whose work might interfere with the Subcontractor's work.

## **4.2 LAWS, PERMITS, FEES, LICENSES AND NOTICES**



**4.2.1** The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of work from resulting purchase orders. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's work, the furnishing of which it is required of the Contractor by the Prime Contract.

**4.2.2** The Subcontractor shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and workers' or workmen's compensation acts insofar as applicable to the performance of this Subcontract. The Subcontractor will comply with and perform its work according to the National Electrical Codes, IEEE, and BCSI methods of data or network cabling installation as well as EIA/TIA. Subcontractor must be licensed to perform work in all states, counties, cities, and municipalities where work will be performed. Subcontractors will, upon request by Contractor, furnish Contractor with license certificate.

#### **4.3 SAFETY PRECAUTIONS AND PROCEDURES**

**4.3.1** The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor, within three days, an injury to an employee or agent of the Subcontractor, which occurred at the site.

**4.3.2** If hazardous substances of any type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other

ployerson the site.

#### 4.3.3

IntheeventtheSubcontractorencountersonthesitematerialreasonabl  
ybelievedtobe asbestos or polychlorinatedbiphenyl(PCB), which  
hasnotbeenrendered harmless,the Subcontractorshallimmediately  
stopworkintheareaaffectedand reporttheconditiontothe  
Contractorinwriting.Theworkin theaffectedareashallresume in  
theabsenceof asbestos or  
polychlorinatedbiphenyl(PCB),orwhenithasbeenrenderedharmless,by  
writtenagreement  
oftheContractorandSubcontractor,orinaccordancewithfinaldeterminationb  
y thearchitect onwhicharbitrationhasnotbeendemande,orby  
arbitrationasprovidedinthisagreement. TheSubcontractorshallnot be  
requiredpursuanttoArticle5toperformwithout consentany  
workrelatingtoasbestos orpolychlorinatedbiphenyl(PCB).

4.3.4 IftheSubcontractordeems,inhisbest judgment,thesiteto be unsafe andisin  
fear forthe safetyofthetechniciansonsite,theSubcontractorhas  
therighttoevacuatethe siteuntil the siteisdeemedsafe.  
UponevacuationtheSubcontractorshallnotifytheContractorofthe situation.

#### 4.4 CLEANING UP

4.4.1 TheSubcontractorshallkeepthepremisesand surroundingarea  
freefromaccumulation of  
wastematerialsorrubbishcausedbyoperationsperformedunderthis  
agreement. This  
includessettingceilingtilesinplace,vacuumping,removalofcable,packagingm  
aterialand the  
like.TheSubcontractorshallnotbeheldresponsibleforuncleanconditionscaus  
edby other contractorsorsubcontractors.TheSubcontractorshallnotify  
Contractorintheevent,thatany other subcontractors,whohavebeenonsite,  
leave debrisortrash.

#### 4.5 WARRANTY

4.5.1 The Subcontractor warrants to the Owner and Contractor that  
materials and equipment furnished under this Subcontract will be of good  
quality, new and matches project  
specificationsunlessotherwise requiredorpermittedby  
theSubcontractDocuments,thatthe work ofthisSubcontractwillbfreefrom  
defects, andthattheworkwillconformwiththerequirements of  
theSubcontractDocuments.

4.5.2 Worknotconformingto theserequirements, including substitutions

not properly approved and authorized, may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Subcontractor. improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents.

- 4.5.3** Material and labor supplied by the Subcontractor will be warranted for a period of one year from the date that the contractor accepted the work. The material warranty will be that of the manufacturer if longer than one year.

#### **4.6 INDEMNIFICATION**

- 4.6.1** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Contractor's consultants, officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's work under this Subcontract, including but not limited to claims for bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including loss of user resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
- 4.6.2** In claims against any person or entity indemnified under this Paragraph 4.6 by an employee of the Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 4.6 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

#### **4.7 REMEDIES FOR NONPAYMENT**

- 4.7.1** If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within 60 days from the time payment should be made as provided in this agreement, the Subcontractor may,

without prejudice to other available remedies, upon seven additional days' written notice to the Contractor, stop the work of this Subcontract until payment of the amount owing has been received.

#### **ARTICLE 5 CHANGES IN THE WORK**

##### **5.1**

The Contractor may make changes in the work by issuing a change order. Upon receipt of such a modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform work that would be inconsistent with the changes made by the modification to the Prime Contract.

5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by modifications to the Contract between the Contractor and the Contractor's customer, issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised work, shall submit promptly to the Contractor written copies of adjustments to the Subcontract Sum and Subcontract Time for such revised work in a manner consistent with requirements of the Subcontract Documents.

#### **ARTICLE 6 WAIVER OF JURY TRIAL; ARBITRATION**

6.1 THE PARTIES HERETO WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY AND STIPULATE THAT ANY AND ALL DISPUTES BETWEEN THE PARTIES HERETO SHALL BE SUBMITTED TO ARBITRATION TO BE CONDUCTED IN THE STATE OF GEORGIA.

6.2 The Arbitration shall be conducted in accordance with the Rules of the American Arbitration Association as applied to the construction industry, unless the parties mutually agree otherwise.

6.3 The parties stipulate and agree that no third parties shall be joined, by consolidation or joinder, or in any other manner, in any such arbitration unless it is shown at the time the demand of arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law; and (2) the

presence of such person or entity is required for complete relief to be afforded in the arbitration.

- 6.4 The award entered by the arbitrator or arbitration panel shall be the final award as to any dispute between the parties. The parties stipulate and agree that any court in the state of Georgia shall have jurisdiction over the parties with regard to entering a judgment on the arbitration award and the parties further stipulate that venue is proper in any state or superior court in the state of Georgia.
- 6.5 The parties stipulate and agree that the laws of the state of Georgia shall apply to any disputes arising between the parties, both as to the interpretation and the enforcement of this agreement and the rights of the parties hereto.

---

**ARTICLE 7. TERMINATION BY CONTRACTOR; NON-ASSIGNABILITY OF SUBCONTRACT**

**7.1 TERMINATION BY THE CONTRACTOR**

- 7.1.1 In the event the Subcontractor is in breach of the terms of this Agreement or fails to perform its scope of work in accordance with the subcontract document or in any way fails to perform in accordance with this agreement, Contractor shall notify Subcontractor in writing of the nature and extent of Subcontractor's breach. In event Subcontractor has failed to remedy such default within three working days of the date of Contractor's notice, Contractor shall have the right to terminate this subcontract, or a portion of the scope of work. In such event, Contractor shall have the right to employ such other persons or entities as may be necessary to remedy Subcontractor's default, and shall have the right to charge any such expense incurred (or the reasonable value of such work in the event Contractor cures such default on its own), and shall have the right to charge such expenses against any balance due to Subcontractor under this agreement. To the extent the expense incurred by the Contractor to cure Subcontractor's default exceeds any amounts owed to Subcontractor, Subcontractor shall reimburse Contractor any such amounts within thirty (30) days of written notification by the Contractor.



7.1.2 Out of convenience, the Contractor may terminate this contract and any resulting purchase orders for specific projects.

**7.2 NON-ASSIGNMENT OF THE SUBCONTRACT; RESTRICTION ON SECOND OR THIRD TIER SUBCONTRACTING**

7.2.1 The Subcontractor shall not assign this Subcontract or any work to be performed hereunder without the prior written consent of the Contractor. Subcontractor is prohibited from second or third tier subcontracting with any other person or entity without the prior written consent of the Contractor.

**7.2.2**

In the event permission is given to the Subcontractor to assign the work contracted by the Contractor, and on request of the Contractor, the Subcontractor will disclose the names of the contractor that will perform work on a specific project.

**ARTICLE 8 SCOPE OF WORK**

8.1 Subcontractor shall perform and provide labor and materials as described in the purchase order documents which shall include all labor, materials, equipment, services and other items required to complete the scope of work of the Subcontract.

**8.2**

Subcontractor will not purchase material that cannot be returned by the Subcontractor to its origin or supplier. The Subcontractor will not bill the Contractor, the Contractor's customer or the business where materials are installed. Contractor will not be liable for return or restocking charges incurred by the Subcontractor for material not used on a specific project unless it is made known to the Contractor before work begins, is stated on the Subcontractor's purchase order from the Contractor.

**ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

9.1 The Subcontractor's date of commencement is the date from which the Contract Time of Paragraph 9.3 is measured; it shall be the date of this agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor on a specific purchase order.

9.2 The work of this Subcontract shall be completed no later than the scheduled dates attached to the purchase order associated with a specific project.

Thesedatesareconsideredtobefinal.Delays beyondthisdatearenotacceptable.Ifworkisdelayedbeyondthetimesanddatesnoted inthe Contractor purchase order to the Subcontractor, Subcontractor will work overtime, work weekends,holidaysandtakewhatevermeansneeded tobringthescheduletoan"onschedule status".Costsassociatedwiththesechargeswillbethe Subcontractor'sunlessagreeddifferently in writingbyboththeContractorandSubcontractor.Time isof theessenceof this Subcontract.

**9.3**

NoextensionoftimewillbevalidwithouttheContractor'swrittenconsentafterclaimmadebythe Subcontractor in accordancewith Paragraph5.2.

---

**ARTICLE10 SUBCONTRACTSUM**

**10.1** See PurchaseOrder.

**ARTICLE11 PAYMENTS**

**11.1** Payment of invoices will be net 45 upon 100% completion of a project and receipt of all required documentation necessary for Contractor to invoice customer.

**11.2** Receipt of signed lien waivers shall be a condition precedent to the payment of any invoice submitted by Contractor.

**ARTICLE12 FINALPAYMENT**

**12.1** The Contractor shall make final payment, constituting the entire unpaid balance of the SubcontractSum,totheSubcontractorwhentheSubcontractor'sworkisfully performedin accordance withtherequirements of theContractDocuments.

**12.2**

Beforeissuanceofthefinalpayment,theSubcontractor,ifrequired,shallsubmit evidence satisfactory totheContractorthatallpayrolls,billsformaterialsand equipment, and allknown indebtednessconnectedwiththeSubcontractor'sworkhavebeen satisfied. TheSubcontractor shall, ifrequiredprovidereleaseof Lienandproofof payment.

**ARTICLE13 INSURANCEAND BONDS**



**13.1** The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability: **\$2,000,000 General liability; \$1,000,000 Workmen's Compensation**

**Subcontractor shall issue a certificate of insurance before starting work on any customer site of Contractor. Contractor and any Contractor customer will be named as additional insured on Subcontractor's insurance certificate.**

**13.2** Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Subcontractor's work until date of final payment and termination of any coverage required to be maintained after final payment.

### **13.3**

Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverage afforded under the policies will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverages shall be submitted with the final application for payment as required in Article 12. If the insurer does not furnish any information concerning reduction of coverage, the Subcontractor shall furnish it with reasonable promptness according to the Subcontractor's information and belief.

### **13.4** Waivers of Subrogation.

The Contractor and Subcontractor waive all rights against (1) each other and any of their Subcontractors, agents and employees, each of the other, and (2) the Owner, the owner's consultants, separate contractors, and any of their subcontractors, agents and employees for damages caused by fire or other perils. The Subcontractor shall require each of the Subcontractor's agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

### **13.5**

The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

**13.6 Performance Bond and Payment Bond: Required if noted on Contractor purchase order.**

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

**15.1**

Where reference is made in this agreement to a provision of the general condition or another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

**ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS**

**16.1**

The Subcontract Documents, except for modifications issued after execution of this agreement, are enumerated as follows:

**16.1.1** This executed CoLiant Solutions, Inc. standard Form of Agreement between Contractor and Subcontractor, 2015 Edition.

**16.1.2** Other documents, if any, forming part of the Subcontract Documents are as follows:

**Purchase orders that include instructions to Subcontractor, addenda, performance schedules, submittals and special instructions to the Subcontractor.**

This agreement entered into as of the day and year first written above.

COLIANT SOLUTIONS, INC.

Ken Stallings  
(Signature)

Ken Stallings, President  
CoLiant Solutions, Inc.

Another Helper  
(Signature)

MARK BEARD  
(Print Name and Title)

6-3-2015  
(Date)

Case: 18CI1:20-cv-00132 Document #: 11 Filed: 02/24/2021 Page 21 of 24



THE HARTFORD  
EASTERN GL OFFICE  
PO BOX 14263  
LEXINGTON KY 40512

September 10, 2020

Another Helper  
97 Co Road 1471  
Cullman AL 35055

Re: Insured: COLIANT SOLUTIONS INC  
Claimant: Diane Roberts  
Date of Loss: October 1, 2017  
Event Number: GL0018786995  
Claim Number: Y43 L 98167

Dear Another Helper:

Please be advised that Hartford Casualty Insurance Company is the General Liability insurance carrier for Coliant Solutions Inc.

Based on the information currently known to us, on 10/1/2017, Diane Roberts, an employee of Wal-Mart was at store #887 in Petal, MS when a portion of ceiling tile fell and struck her. It was determined that the ceiling tile that fell had an unattached security camera and was installed by your company.

This letter will serve as formal tender of defense and indemnification of the above-referenced loss and a request that Another Helper provide our policyholder with additional named insured coverage under your general liability policy.

We direct your attention to Article 13 of the Master Subcontract Agreement, which contains the following insurance obligations.

*13.1 The Subcontractor shall purchase and maintain insurance of the following types of Coverage and limits of liability: \$2,000,000 General liability; \$1,000,000 Workmen's Compensation*

*Subcontractor shall issue a certificate of insurance before starting work on any Customer site of Contractor. Contractor and any Contractor Customer will be named as additional insured on Subcontractor's Insurance certificate.*

We also direct your attention to the attached Certificate of Insurance (if applicable) issued to Another Helper under policy # L155000960-1. Coliant Solutions is referenced as an additional insured under your General Liability policy.



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In addition, we believe that Another Helper is obligated to defend, indemnify and hold harmless Coliant Solutions for the above reference claim being made by Diane Roberts. We direct your attention to section 4.6 Indemnification, which contains the following indemnification obligations.

#### 4.6 INDEMNIFICATION

*4.6.1 To the fullest extent permitted by law, the Subcontractor Shall indemnify and hold harmless the Owner, Contractor, Contractor's consultants, officers, agents and employees From and against claims, damages, losses and expenses, including But not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's work under This Subcontract, including but not limited to claims for bodily injury, sickness, disease or death, or to injury to or destruction of Tangible property (other than the work itself) including loss of Use resulting there from, but only to the extent caused in whole or in Part by negligent acts or omissions of the Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.*

At this time, we ask that you respond as follows:

- Acknowledge that Another Helper will afford insurance coverage to Coliant Solutions as an additional named insured and / or defend and indemnify Coliant Solutions.
- Provide us with a complete copy of the applicable commercial general liability policy, as well as any applicable excess policy with your company.
- Should a release be signed that Coliant Solutions Inc & Hartford Casualty Insurance Company be listed on the release and provided copies.

Thank you in advance for your anticipated prompt attention to the above. If there are any questions or concerns please do not hesitate to contact me, otherwise I ask that we be furnished with your response and the requested materials within the next 15 days.

Sincerely,

*Lyle Congdon*

Lyle Congdon

Claim Representative

Direct Number: (860) 737 - 4321

Toll Free Number: (888) 525 - 2652 Ext. 2307862

Fax: (866) 809 - 1178

lyle.congdon@thehartford.com

Writing Company Name: Hartford Casualty Insurance Company

CC: Sedgwick CMS via Email

Enclosures:

## **MASTER SUBCONTRACT AGREEMENT**

This Master Agreement is entered into between CoLiant Solutions, Inc. (hereinafter "Contractor") and Another Helper (hereinafter "Subcontractor") made and entered into as of June 2, 2015.

Subcontractor acknowledges that Contractor has entered into a contract with Another Helper ("Owner") for a certain project located in Alabama ("Prime Contract"), and this Agreement with Contractor is for the provision of services as part of the project. For and in consideration of other good and valuable considerations, including the promises set forth herein, the receipt and sufficiency of which are acknowledged, the parties do hereby agree as follows:

### **ARTICLE 1 THE SUBCONTRACT DOCUMENTS**

1.1 The Subcontract Documents consist of (1) this agreement; (2) the purchase order(s); (3) other documents listed in Article 16 of this agreement; and (4) written modifications to this Subcontract executed by both Contractor and Subcontractor, if any. These documents are material to and from the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or set forth herein. The Subcontract represents the entire agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than modifications issued subsequent to the execution of this agreement, appear in Article 16.

1.2

The Subcontractor shall be furnished copy of the Subcontract Documents upon request, but the Contractor may charge the Subcontractor for the cost of Reproduction.

1.3 This Subcontract Agreement shall not be construed to create a contractual relationship of any kind between the Subcontractor and the Owner. Subcontractor acknowledges that its only contract with regard to the project is with Contractor, on the terms and conditions set forth herein.

### **ARTICLE 2. MUTUAL RIGHTS AND RESPONSIBILITIES [DELETED]**

### **ARTICLE 3 CONTRACTORS**

#### **3.1 SERVICES PROVIDED BY THE CONTRACTOR**

3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling

Case: 18CI1:20-cv-00132 Document #: 11 Filed: 02/24/2021 Page 24 of 24

Solutions, Inc. has acted with reasonable diligence to correct the entry of default. The Defendant's failure to act was not willful, setting aside the entry of default will not prejudice the plaintiff, and the Defendant has valid and meritorious defenses to the merits of Plaintiff's claims. Plaintiff would suffer no irreparable injury if the entry of default is set aside. Defendant Coliant Solutions, Inc. will be prejudiced by suffering a default judgment on Plaintiff's allegations and "good cause" exists for this court to set aside the clerk's entry of default.

WHEREFORE, PREMISES CONSIDERED, Defendant Coliant Solutions, Inc. requests that this Court set aside the clerk's Entry of Default. Defendant Coliant Solutions, Inc. further requests such other relief to which it may be entitled as a matter of equity or law.

Respectfully submitted, this the 22th day of February, 2021.



H. Wesley Williams, III

H. Wesley Williams, III  
MS Bar No. 9320  
Cecelia Virden  
MS Bar No. 105199  
Markow Walker, PA  
Post Office Box 13669  
Jackson, MS 39236-3669  
Telephone: 601-853-1911  
Facsimile: 601-853-8284  
E-mail: [wwilliams@markowwalker.com](mailto:wwilliams@markowwalker.com)  
E-mail: [cvirden@markowwalker.com](mailto:cvirden@markowwalker.com)  
*Counsel for Coliant Solutions, Inc.*



IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

**Diane Roberts,**

Plaintiff

v.

**Coliant Solutions, Inc., Mark Beard,  
and John Does 1 through 5,  
Individually, Jointly and Severally,**

Defendant

Cause No. 18CI1:20-cv-132

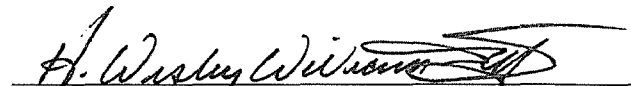
**Notice of Service**

NOTICE is hereby given, pursuant to Mississippi Rules of Civil Procedure,  
that the Defendant, Coliant Solutions, Inc. has this date served the following:

*Coliant Solutions, Inc.'s Requests for Admissions to Plaintiff, Diane Roberts*

The undersigned retains the original of the above as custodian thereof.

Respectfully submitted, this the 4th day of March, 2021.

  
H. Wesley Williams, III

Case: 18CI1:20-cv-00132 Document #: 12 Filed: 03/04/2021 Page 2 of 2

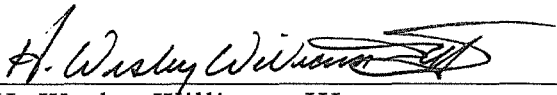
H. Wesley Williams, III  
MS Bar No. 9320  
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Markow Walker, PA  
Post Office Box 13669  
Jackson, MS 39236-3669  
Telephone: 601-853-1911  
Facsimile: 601-853-8284  
E-mail: wwilliams@markowwalker.com  
E-mail: cvirden@markowwalker.com  
*Counsel for Coliant Solutions, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing Pleading was  
this day forwarded to all counsel of record by depositing a copy of same via:

- |  |   |
|--|---|
| <input type="checkbox"/> United States Mail    | <input type="checkbox"/> Certified Mail |
| <input type="checkbox"/> Facsimile             | <input type="checkbox"/> Hand Delivery  |
| <input type="checkbox"/> Email                 | <input type="checkbox"/> Overnight Mail |
| <input checked="" type="checkbox"/> ECF System |   |

THIS the 4th day of March, 2021.

  
\_\_\_\_\_  
H. Wesley Williams, III

Case: 18CI1:20-cv-00132 Document #: 13 Filed: 03/05/2021 Page 1 of 2

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

**Diane Roberts,**

Plaintiff

v.

**Coliant Solutions, Inc., Mark Beard,  
and John Does 1 through 5,  
Individually, Jointly and Severally,**

Defendant

Cause No. 18CI1:20-cv-132


**Notice of Service**

NOTICE is hereby given, pursuant to Mississippi Rules of Civil Procedure,  
that the Defendant, Coliant Solutions, Inc. has this date served the following:

*Coliant Solutions, Inc.'s First Interrogatories and Requests for Production of  
Documents to Plaintiff*

The undersigned retains the original of the above as custodian thereof.

Respectfully submitted, this the 5th day of March, 2021.

  
H. Wesley Williams, III


H. Wesley Williams, III  
MS Bar No. 9320  
Cecelia Virden  
MS Bar No. 105199  
Markow Walker, PA  
Post Office Box 13669  
Jackson, MS 39236-3669  
Telephone: 601-853-1911  
Facsimile: 601-853-8284  
E-mail: wwilliams@markowwalker.com  
E-mail: cvirden@markowwalker.com  
*Counsel for Coliant Solutions, Inc.*

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| <input type="checkbox"/> Facsimile             | <input type="checkbox"/> Hand Delivery  |
| <input type="checkbox"/> Email                 | <input type="checkbox"/> Overnight Mail |
| <input checked="" type="checkbox"/> ECF System |   |

THIS the 5th day of March, 2021.

  
\_\_\_\_\_  
H. Wesley Williams, III

Case: 18CI1:20-cv-00132 Document #: 13 Filed: 03/05/2021 Page 1 of 2

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

**Diane Roberts,**

Plaintiff

v.

**Coliant Solutions, Inc., Mark Beard,  
and John Does 1 through 5,  
Individually, Jointly and Severally,**

Defendant

Cause No. 18CI1:20-cv-132


**Notice of Service**

NOTICE is hereby given, pursuant to Mississippi Rules of Civil Procedure,  
that the Defendant, Coliant Solutions, Inc. has this date served the following:

*Coliant Solutions, Inc.'s First Interrogatories and Requests for Production of  
Documents to Plaintiff*

The undersigned retains the original of the above as custodian thereof.

Respectfully submitted, this the 5th day of March, 2021.

  
H. Wesley Williams, III

Case: 18CI1:20-cv-00132 Document #: 14 Filed: 03/12/2021 Page 1 of 3

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

**Diane Roberts,**

Cause No. 18CI1:20-cv-132

Plaintiff

v.

**Request for Civil Subpoena Duces  
Tecum**

**Coliant Solutions, Inc., Mark Beard,  
and John Does 1 through 5,  
Individually, Jointly and Severally,**

Defendant

To: Gwen Wilks  
Circuit Court Clerk  
P.O. Box 992  
Hattiesburg, MS 39403

**YOU ARE REQUESTED** to issue the Subpoenas Duces Tecum summoning  
the records custodian for the following:

Wal-Mart Stores East, LP  
Records Custodian  
C T Corporation System  
645 Lakeland East Drive, Suite 101  
Flowood, MS 39232

To be and appear at the offices of Markow Walker, P.A., 599 599 Highland Colony  
Parkway, Suite 100, Ridgeland, Mississippi, 39157, fifteen days from receipt of the  
subpoena, and to produce and bring with him/her the following documents, or in the  
alternative, to mail the documents listed below to Markow Walker, P.A., P. O. Box  
13669, Jackson, Mississippi 39236-3669, Attention: Wes Williams, Esq.:


H. Wesley Williams, III  
MS Bar No. 9320  
Cecelia Virden  
MS Bar No. 105199  
Markow Walker, PA  
Post Office Box 13669  
Jackson, MS 39236-3669  
Telephone: 601-853-1911  
Facsimile: 601-853-8284  
E-mail: wwilliams@markowwalker.com  
E-mail: cvirden@markowwalker.com  
*Counsel for Coliant Solutions, Inc.*

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| <input type="checkbox"/> Facsimile             | <input type="checkbox"/> Hand Delivery  |
| <input type="checkbox"/> Email                 | <input type="checkbox"/> Overnight Mail |
| <input checked="" type="checkbox"/> ECF System |   |

THIS the 5th day of March, 2021.

  
\_\_\_\_\_  
H. Wesley Williams, III

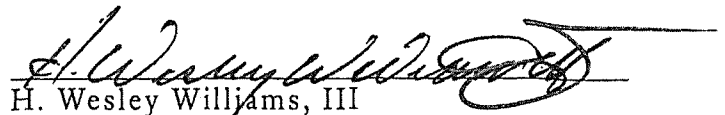


Case: 18CI1:20-cv-00132 Document #: 14 Filed: 03/12/2021 Page 2 of 3

With respect to the accident which occurred on October 1, 2017, involving Walmart employee Diane Roberts, please produce:

- First report of injury of Employer (Form B-3)
- Incident Report
- Written or recorded statements from any witnesses, including Diane Roberts.
- Video recording or footage of the accident.
- Photos of the accident scene or of the Plaintiff.
- ~~Medical certificates from any physician concerning Ms. Roberts' ability to~~  
return to work.
- W-2 forms issued to Ms. Roberts for tax years 2014 to 2020.
- Attendance records from 10/1/2017 to the present.
- Records showing the company that installed, maintained, or repaired the camera that allegedly struck Ms. Roberts in the head.
- Documents reflecting the scope of work of any company installing, maintaining, or repairing any security cameras in the Walmart store where this accident occurred on or about October 1, 2017.
- Personnel file of Diane Roberts, including but not limited to documents pertaining to her hiring, firing, promotion or demotion.
- Drug or alcohol testing performed on Ms. Roberts on or about October 1, 2017.

Respectfully submitted, this the 12<sup>th</sup> day of March, 2021.

  
H. Wesley Williams, III

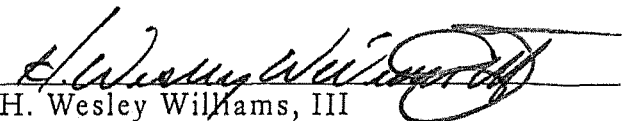
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*Counsel for Coliant Solutions, Inc.*

**CERTIFICATE OF SERVICE**

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| <input type="checkbox"/> Facsimile             | <input type="checkbox"/> Hand Delivery  |
| <input type="checkbox"/> Email                 | <input type="checkbox"/> Overnight Mail |
| <input checked="" type="checkbox"/> ECF System |   |

THIS the 12th day of March, 2021.

  
H. Wesley Williams, III

Case: 18CI1:20-cv-00132 Document #: 14-1 Filed: 03/12/2021 Page 1 of 4

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

**Diane Roberts,**

Cause No. 18CI1:20-cv-132

Plaintiff

v.

**Subpoena Duces Tecum**

**Coliant Solutions, Inc., Mark  
Beard, and John Does 1  
through 5, Individually,  
Jointly and Severally,**

Defendant

STATE OF MISSISSIPPI

COUNTY OF FORREST

To: Any Person Authorized by Statute to Serve Process-  
Greetings:

We Command You to Summon:

Wal-Mart Stores East, LP  
Records Custodian  
C T Corporation System  
645 Lakeland East Drive, Suite 101  
Flowood, MS 39232

Pursuant to Rule 45(b)(2) of the Mississippi Rules of Civil Procedure, to be and appear at the offices of counsel for the defendants Markow Walker, P.A., 599 599 Highland Colony Parkway, Suite 100, Ridgeland, Mississippi, 39157, fifteen(15) days from service of the subpoena, and to produce with him/her the following documents,

or in the alternative, to mail the documents listed below to Markow Walker, P.A., P. O. Box 13669, Jackson, Mississippi 39236-3669, Attention: Wes Williams, Esq.:

With respect to the accident which occurred on October 1, 2017, involving Walmart employee Diane Roberts, please produce:

- First report of injury of Employer (Form B-3)
  - Incident Report
  - Written or recorded statements from any witnesses, including Diane Roberts.
  - Video recording or footage of the accident.
- 
- Photos of the accident scene or of the Plaintiff.
  - Medical certificates from any physician concerning Ms. Roberts' ability to return to work.
  - W-2 forms issued to Ms. Roberts for tax years 2014 to 2020.
  - Attendance records from 10/1/2017 to the present.
  - Records showing the company that installed, maintained, or repaired the camera that allegedly struck Ms. Roberts in the head.
  - Documents reflecting the scope of work of any company installing, maintaining, or repairing any security cameras in the Walmart store where this accident occurred on or about October 1, 2017.
  - Personnel file of Diane Roberts, including but not limited to documents pertaining to her hiring, firing, promotion or demotion.
  - Drug or alcohol testing performed on Ms. Roberts on or about October 1, 2017.

Case: 18CI1:20-cv-00132 Document #: 14-1 Filed: 03/12/2021 Page 3 of 4

Please issue this Subpoena immediately.

GWEN WILKS  
CIRCUIT COURT CLERK

By: \_\_\_\_\_  
DEPUTY CLERK

Case: 18CI1:20-cv-00132 Document #: 14-1 Filed: 03/12/2021 Page 4 of 4

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

**Diane Roberts,**

Cause No. 18CI1:20-cv-132

Plaintiff

v.

**Proof of Services**

**Coliant Solutions, Inc., Mark  
Beard, and John Does 1  
through 5, Individually,  
Jointly and Severally,**

Defendant

To: Wal-Mart Stores East, LP  
Records Custodian  
C T Corporation System  
645 Lakeland East Drive, Suite 101  
Flowood, MS 39232

I, the undersigned process server, do hereby certify that I have delivered the  
above and foregoing Subpoena Duces Tecum by personally serving a copy of same  
upon \_\_\_\_\_.

This the \_\_\_\_ day of \_\_\_\_\_, 2021.

BY: \_\_\_\_\_  
Process Server

Case: 18CI1:20-cv-00132 Document #: 15 Filed: 03/15/2021 Page 1 of 4

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

**Diane Roberts,**

Cause No. 18CI1:20-cv-132

Plaintiff

v.

**Subpoena Duces Tecum**

**Coliant Solutions, Inc., Mark  
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through 5, Individually,  
Jointly and Severally,**

Defendant

STATE OF MISSISSIPPI

COUNTY OF FORREST

To: Any Person Authorized by Statute to Serve Process-  
Greetings:

We Command You to Summon:

Wal-Mart Stores East, LP  
Records Custodian  
C T Corporation System  
645 Lakeland East Drive, Suite 101  
Flowood, MS 39232

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Case: 18CI1:20-cv-00132 Document #: 15 Filed: 03/15/2021 Page 2 of 4

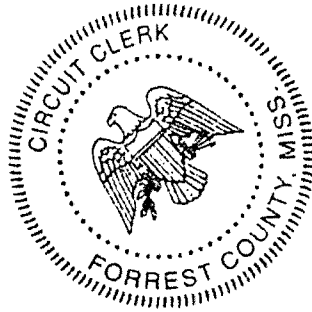
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Case: 18CI1:20-cv-00132 Document #: 15 Filed: 03/15/2021 Page 3 of 4

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GWEN WILKS  
CIRCUIT COURT CLERK

By: Chasity Pierce D.C.  
DEPUTY CLERK

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

**Diane Roberts,**

Cause No. 18CI1:20-cv-132

Plaintiff

v.

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upon \_\_\_\_\_.

This the \_\_\_\_ day of \_\_\_\_\_, 2021.

BY: \_\_\_\_\_  
Process Server

RETURN

Case: 18CI1:20-cv-00132 Document #: 16 Filed: 03/17/2021 Page 1 of 4

Page 1 of 4

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

Diane Roberts,

Cause No. 18CI1:20-cv-132

Plaintiff

v.

Subpoena Duces Tecum

Coliant Solutions, Inc., Mark  
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Jointly and Severally,

Defendant

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Case: 18CI1:20-cv-00132 Document #: 16 Filed: 03/17/2021 Page 2 of 4

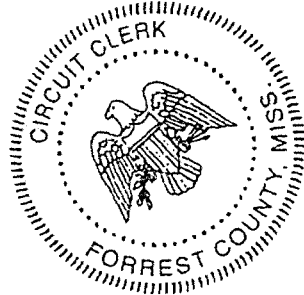
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Case: 18CI1:20-cv-00132 Document #: 16 Filed: 03/17/2021 Page 3 of 4

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GWEN WILKS  
CIRCUIT COURT CLERK

By: Chasity Pierce D.C.  
DEPUTY CLERK

Case: 18CI1:20-cv-00132 Document #: 16 Filed: 03/17/2021 Page 4 of 4

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

Diane Roberts,

Cause No. 18CI1:20-cv-132

Plaintiff

v.

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through 5, Individually,  
Jointly and Severally,

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Flowood, MS 39232

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upon MATT THIBODEAUX, CT CORPORATION, IN BEHALF OF  
WAL-MART STORES EAST, LP

This the 16TH day of MARCH, 2021.

BY: 

Process Server



RETURN

Case: 18CI1:20-cv-00132 Document #: 16 Filed: 03/17/2021 Page 1 of 4  
Page 1 of 4

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

Diane Roberts,

Cause No. 18CI1:20-cv-132

Plaintiff

v.

Subpoena Duces Tecum

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through 5, Individually,  
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Case: 18CI1:20-cv-00132 Document #: 16 Filed: 03/17/2021 Page 2 of 4

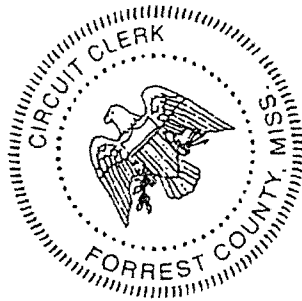
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Case: 18CI1:20-cv-00132 Document #: 16 Filed: 03/17/2021 Page 3 of 4

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GWEN WILKS  
CIRCUIT COURT CLERK

By: Chasity Pierce D.C.  
DEPUTY CLERK

Case: 18CI1:20-cv-00132 Document #: 16 Filed: 03/17/2021 Page 4 of 4

IN THE CIRCUIT COURT OF  
FORREST COUNTY, MISSISSIPPI

Diane Roberts,

Cause No. 18CI1:20-cv-132

Plaintiff

v.

Proof of Services

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through 5, Individually,  
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WAL-MART STORES EAST, LP

This the 16TH day of MARCH, 2021.

BY: 

Process Server

Case: 18CI1:20-cv-00132 Document #: 17 Filed: 04/02/2021 Page 1 of 2

**IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI**

**DIANE ROBERTS**

**PLAINTIFF**

**V.**

**CAUSE NO. 18CI1:20-cv-132**

**COLIANT SOLUTIONS, INC.,  
MARK BEARD, AND JOHN DOES  
1 THROUGH 5, INDIVIDUALLY,  
JOINTLY and SEVERALLY**

**DEFENDANTS**

---

**NOTICE OF SERVICE OF RESPONSES TO DEFENDANT COLIANT SOLUTION  
INC'S FIRST SET OF REQUEST FOR ADMISSIONS**

---

Notice is hereby given, pursuant to the local rules, that Plaintiff, Diane Roberts, has this date served in the above entitled action Plaintiff's Responses to Defendant Coliant Solution Inc's First Set of Request for Admissions.

The undersigned retains the originals of the above papers as custodian thereof pursuant to the local rules.

This the 2<sup>nd</sup> day of April, 2021.

Respectfully Submitted,

DIANE ROBERTS, PLAINTIFF

BY: /s/Willie T. Abston  
Willie T. Abston (MS Bar No. 9935)

Of Counsel:

WILLIE T. ABSTON, LLC  
Post Office Box 320727  
Flowood, MS 39232  
Tel.: (601)487-8839  
Fax: (601)487-8667  
Email: [willie.abston@abstonlaw.com](mailto:willie.abston@abstonlaw.com)  
*COUNSEL FOR PLAINTIFF*

Case: 18CI1:20-cv-00132 Document #: 17 Filed: 04/02/2021 Page 2 of 2

**CERTIFICATE OF SERVICE**

I, Willie T. Abston, do hereby certify that I have this day electronically filed the foregoing Notice of Service with the Clerk of Court using MEC system, which sent notification of such filing to:

H. Wesley Williams, III, Esq.  
Cecelia Virden, Esq.  
Markow Walker, PA  
Post Office Box 13669  
Jackson, MS 39236-3669  
*Counsels for Coliant Solutions, Inc.*

This the 2<sup>nd</sup> day of April, 2021.

/s/Willie T. Abston  
Willie T. Abston